

PT 95-52  
Tax Type: PROPERTY TAX  
Issue: Educational Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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COLUMBIA COLLEGE )  
Applicant ) Docket #s 91-16-855  
 ) and 92-16-1133  
 ) Parcel Index # 17-15-301-012-0000  
v. )  
 )  
THE DEPARTMENT OF REVENUE ) George H. Nafziger  
OF THE STATE OF ILLINOIS ) Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorney Richard L. Mandel appeared on behalf of Columbia College (hereinafter referred to as the "applicant").

SYNOPSIS: The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on December 13, 1994, to determine whether or not Cook County parcel No. 17-15-301-012-0000 and the 14-story building located thereon, should be exempt from real estate taxes for the 1991 and 1992 assessment years.

Mr. Michael DeSalle, vice-president of finance of the applicant, and Mr. A. C. Gall, provost and executive vice-president of the applicant were present, and testified on behalf of the applicant.

The issues in this matter included first, whether the applicant is a school. The second issue is whether the applicant owned the parcel here in issue and/or the building thereon, during the 1991 and 1992 assessment years. The last issue is whether the applicant used the parcel here in issue and the building thereon, for school purposes during the 1991 and 1992 assessment years. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a school. It is also determined that American Security Corporation, a for-profit

corporation, owned the parcel here in issue during the 1991 and 1992 assessment years. During the 1991 and 1992 assessment years, it is determined that the applicant owned the 14-story building located on this parcel. It is further determined that the portion of the building on this parcel occupied by the applicant during the 1991 and 1992 assessment years, was used for school purposes. Finally, it is determined that the areas of the building on this parcel which were leased for profit, including the area of the first floor of the building on this parcel leased to Follett College Stores Corporation, did not qualify for exemption during the 1991 and 1992 assessment years.

FINDINGS OF FACT:

1. The position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that 26.85% of the building qualified for exemption during the 1991 assessment year, while 100% of the land and 73.15% of the building remained taxable, and that 43.89% of the building qualified for exemption during the 1992 assessment year, while 100% of the land and 56.11% of the building remained taxable, was established by the admission in evidence of Department's Exhibits 1 through 6C.

2. On July 10, 1992, and June 21, 1993, respectively, the Cook County Board of Appeals transmitted Statements of Facts in Exemption Application, concerning Cook County parcel No. 17-15-301-012-0000 and the 14-story building located thereon, for the 1991 and 1992 assessment years to the Department (Dept. Ex. Nos. 2 and 2J).

3. On April 29, 1994, the Department exempted 26.85% of the building on this parcel for the 1991 assessment year, while denying the exemption of 100% of the land and 73.15% of the building thereon (Dept. Ex. No. 3).

4. On January 6, 1994, the Department exempted 43.89% of the building on this parcel for the 1992 assessment year, while denying the exemption of

100% of the land and 56.11% of the building thereon (Dept. Ex. No. 3A).

5. On May 12, 1994, and January 14, 1994, respectively, the attorney for the applicant requested a formal hearing in these matters (Dept. Ex. Nos. 4 & 4A).

6. The hearing held on December 13, 1994, was held pursuant to those requests.

7. The applicant was incorporated on April 30, 1928, as The Columbia College of Expression, for the following purposes:

"...the teaching of expression in speech and otherwise, and allied subjects, and the granting of degrees for study therein."

8. During the 1991 and 1992 assessment years, the applicant's student enrollment was approximately 6,800, of which approximately 500 were graduate students.

9. During the 1991 and 1992 assessment years, the applicant offered the undergraduate degree of Bachelor of Arts.

10. During 1991 and 1992, the applicant also offered the graduate degrees of Master of Arts and Master of Fine Arts.

11. All of the applicant's students were required to take a minimum of one-third of their course work in traditional liberal arts courses, including English humanities, science, mathematics, history, and social studies.

12. The applicant was accredited during 1991 and 1992, by the North Central Association of Colleges and Schools.

13. On July 15, 1962, the Chicago Title and Trust Company (hereinafter referred to as "Chicago Title"), owned the parcel here in issue and the 14-story building located thereon. Chicago Title is presumed to be a for-profit corporation.

14. On July 16, 1962, Chicago Title conveyed the land only of this parcel to American Security Corporation. American Security Corporation is

presumed to be a for-profit corporation (Dept. Ex. No. 4E).

15. On July 16, 1962, American Security Corporation executed a ground lease, leasing this parcel back to Chicago Title, Trust No. 44348, for a term of 40 years, or until July 15, 2002.

16. Said ground lease provided that the lessee would pay the taxes on this parcel. Said lease also provided that the lessee could sell and convey its interest in this parcel, provided it was not in default on the ground lease.

17. On July 22, 1974, American Security Corporation and Chicago Title, Trust No. 52234 (Chicago Title had conveyed the building on this parcel, and assigned the ground lease of said parcel from Trust No. 44348 to Trust No. 52234), executed an amendment to the original ground lease dated July 16, 1962 (Dept. Ex. No. 2R).

18. This amendment included an option to renew the lease for an additional 40 years, to July 15, 2042.

19. Said amendment also included an irrevocable option in the lessee, to purchase the property for \$500,000.00, plus 3% a year from July 15, 1962, provided the note dated July 15, 1974, in the amount of \$5,000,000.00, was also paid in full.

20. By a letter dated July 21, 1992, the applicant, as assignee of the ground lease, advised American Security Corporation that it was exercising the foregoing option to renew the ground lease until July 15, 2042 (Applicant's Exhibit 3).

21. On May 30, 1990, Chicago Title, Trust No. 52234, assigned the foregoing amended ground lease to the applicant, and also conveyed the 14-story building thereon, to the applicant.

22. On May 30, 1990, the applicant was one of several lessees of this building.

23. It is the intention of the applicant as various leases of space in

the building expire, to remodel the vacated areas and use them as classrooms, a library, and for other educational and school uses.

24. Mr. DeSalle testified that when the applicant purchased the building, it considered three financing options.

25. The first option was to purchase the land for approximately \$920,000.00, outright, pursuant to the option to purchase in the amended ground lease, and also purchase the building (Tr. p. 20).

26. The second option was to purchase the land and finance that purchase, and also buy the building (Tr. pp. 21 and 22).

27. The third option was to continue to make the lease payments, and to buy the building (Tr. pp. 22, 23, and 24).

28. The third option was the least expensive, according to Mr. DeSalle, and the one which the applicant decided to pursue. (Tr. p. 24).

29. Mr. Gall testified that any one of the three options was available to the applicant, but since the third option was the most economical, that was the one chosen (Tr. pp. 49 and 50).

30. The applicant entered into an agreement with Follett College Stores Corporation (hereinafter referred to as Follett), on or about June 15, 1987 (Applicant Ex. No. 1).

31. It is presumed that Follett is a for-profit business, which operated book and general merchandise stores for profit.

32. At page 12 of the agreement with Follett, Follett agreed to carry quality merchandise, including Hallmark, Kodak, Josten's, General Electric, Sharp, and Champion.

33. In addition to textbooks, workbooks, mimeographed materials, and school supplies, Follett was given the exclusive right to sell stationery, magazine subscriptions, sporting goods, physical education equipment, jewelry, novelties, toilet articles, soft goods, greeting cards, religious articles, class rings, room accessories, language tapes, radios,

phonographs, and computer software.

34. In exchange for these various rights, including the right to occupy space on the first floor of the building here in issue, Follett agreed to pay the applicant a guaranteed commission or a percentage of gross revenue, whichever was greater.

35. In addition, Follett agreed to sell the applicant interdepartmental supplies at a 20% discount, and to give applicant's facility and staff a 10% discount.

36. In addition, the agreement between Follett and the applicant, which was for a term of 7 years, referred to the "demised premises", and discussed the ownership of "leasehold improvements" at the expiration of the fixed term of the agreement.

37. Based on the foregoing, I find that the agreement between Follett and the applicant was a lease for profit, allowing Follett to sell books and general merchandise to students of applicant, and others.

38. During 1991 and 1992, I find that Follett occupied 5,642 square feet of the first floor of the building on this parcel.

39. The building on the parcel here in issue contained 144,071 square feet.

40. During the 1991 assessment year, I find that the applicant occupied 37,039 square feet during January through April, 42,489 square feet, during May through July, and 47,894 square feet during August through December, for school purposes.

41. During the 1992 assessment year, I find that the applicant occupied 47,894 square feet during January, February, and March, 51,940 square feet during April, May and June, and 65,307 square feet during July through December 1992, for school purposes.

42. The remainder of the building on this parcel during both the 1991 and 1992 assessment years was leased for profit to either Follett or the

holdover tenants.

43. I find that the applicant is a school.

44. I find that during the 1991 and 1992 assessment years, American Security Corporation, a for-profit corporation, owned the land included in Cook County parcel No. 17-15-301-012-0000.

45. Said land, I find, was leased pursuant to a ground lease, which had been assigned to the applicant during said years.

46. The applicant, I find, owned the 14-story building located on this parcel during the 1991 and 1992 assessment years,

47. During the 1991 assessment year, I find that the applicant occupied 29.79% of the building on this parcel, and used said 29.79% of the building for school purposes.

48. During the 1991 assessment year, I find that the applicant leased 70.21% of the building on this parcel to Follett and others, pursuant to leases for profit.

49. During the 1992 assessment year, I find that the applicant occupied 39.99% of the building on this parcel, and used said 39.99% of the building for school purposes.

50. During the 1992 assessment year, I find that the applicant leased 60.01% of the building on this parcel to Follett and others, pursuant to leases for profit.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.1 exempts certain property from taxation in part as follows:

"...and including the real estate on which the schools are located and any other real property used by such schools

exclusively for school purposes, not leased by such schools or otherwise used with a view to profit...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944) and *People ex rel. Lloyd v. university of Illinois*, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

The Supreme Court, in applying the language of Article IX, Section 6, of the Illinois Constitution, concerning schools, to the provisions of Section 19.1 of the Revenue Act of 1939, (now 35 ILCS 205/19.1), has over the years developed a two-part test.

In *Coyne Electrical School v. Paschen*, 12 Ill.2d 387 (1957), the Court summarized this two-part test and its earlier decisions on this issue, and stated as follows:

"On the basis of the foregoing decisions it is manifest that two things are necessary to qualify a private institution for tax exemption as a school; first, a course of study which fits into the general scheme of education founded by the State and supported by public taxation; second, a course of study which substantially lessens what would otherwise be a governmental function and obligation."

Based on the foregoing, I conclude that the applicant is a school,



pursuant to 35 ILCS 205/19.1.

In the case of *City of Chicago v. Department of Revenue*, 147 Ill.2d 484 (1992), the Supreme Court determined that where the underlying land was owned by a for-profit entity which enjoyed the benefits of said ownership and leased said property to an exempt organization, which owned a building located on said lease, that the value of the land was taxable to the nonexempt land owner, in this case, American Security Corporation. Said Court then went on in that case to exempt the ground lease and the building which were owned by an exempt organization, the City of Chicago. In this case, as in *The City of Chicago* case, the applicant was the lessee under a long-term ground lease and the owner of the building, and I therefore conclude that applicant qualifies as a school, pursuant to 35 ILCS 205/19.1, and that the ground lease and the portions of the building used for school purposes, qualified for exemption during the 1991 and 1992 assessment years.

The applicant contends that this is a sale and leaseback situation similar to the situation in *Cole Hospital v. Champaign County Board of Review*, 113 Ill.App.3d 96 (4th Dist. 1977), and also *Henderson County Retirement Center v. Department of Revenue*, 237 Ill.App.3d 522 (3rd Dist. 1992), and consequently, the applicant has sufficient incidents of ownership to be considered the owner of the parcel in this case for real estate tax purposes. However, the *Cole Hospital* case and the *Henderson County* case are distinguishable from the case here in issue. In both of those cases, the Court determined that *Cole Hospital* and *Henderson County* had each tried to obtain conventional financing and were unable to obtain same, and entered into the sale and leaseback only after all other attempts at financing had failed. That is not the case here, as both Mr. DeSalle and Mr. Gall admitted that the applicant had other options available to it, although this option was the most economical. Another difference is that

in both the Cole Hospital and Henderson County cases, Cole Hospital and Henderson County were the parties entering into the sale and leaseback. In this case, the sale and leaseback were entered into by Chicago Title back in 1962, long before the applicant had any interest in this property. The final difference between the Cole Hospital and Henderson County cases, and this case is that in Cole Hospital and Henderson County, both the land and building were sold, and leased back. In this case only, the land was sold, and leased back. Consequently, this is not a sale and leaseback similar to the Cole Hospital and Henderson County cases.

I therefore conclude that the value of the land included in Cook County parcel No. 17-15-301-012-0000, should be assessed to American Security Corporation, the for-profit owner thereof, for the 1991 and 1992 assessment years, since American Security Corporation is receiving the fruits of that ownership, namely the lease payments.

Concerning the lease by the applicant of 5,642 square feet of the first floor of the building on this parcel to Follett, the items sold by Follett, as previously set forth, include a broad range of general merchandise items, in addition to school-related items, which it is contemplated, will be sold to students, the vast majority of whom are residents of the Chicago area, and not living in college-owned residential facilities. In addition, Follett has the exclusive right to sell said merchandise on college premises. Also, Follett agrees to pay to the applicant, as rent, either a "guaranteed commission", or a "percentage of gross revenue", both of these terms contemplating profit. It is therefore obvious from its terms, that the applicant entered into this agreement anticipating making a profit.

It should be noted that the Illinois Courts have consistently held that the use of property to produce income, is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin

v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

Consequently, I conclude that the area of the first floor leased by the applicant to Follett, as well as the other areas of the building still subject to holdover leases, should remain on the tax rolls and be assessed to the applicant, the owner of the building on this parcel for the 1991 and 1992 assessment years.

I therefore recommend that the underlying fee interest in the land included in Cook County parcel No. 17-15-301-012-0000, remain on the tax rolls for the 1991 and 1992 assessment years, and that the same be assessed to American Security Corporation, the nonexempt owner thereof.

I further recommend that 29.79% of the building on this parcel be exempt from real estate tax for the 1991 assessment year, and that 39.99% of the building on this parcel be exempt from real estate tax for the 1992 assessment year.

I also recommend that 70.21% of the building remain on the tax rolls for the 1991 assessment year, and that said 70.21% of the building be assessed to the applicant, the owner thereof. Finally, I recommend that 60.01% of the building on this parcel remain on the tax rolls for the 1992 assessment year, and that said 60.01% of the building be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

August , 1995